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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 134 (VSB)

5 CALVIN DARDEN, JR.,

6 Trial

7 Defendant.

-----x

8 New York, N.Y.
9 October 2, 2024
10 10:00 a.m.

11 Before:

12 HON. VERNON S. BRODERICK,

13 District Judge
14 -and Jury-

14 APPEARANCES

15 DAMIAN WILLIAMS

United States Attorney for the
16 Southern District of New York

17 KEVIN MEAD

STEPHEN J. RITCHIN

18 WILLIAM C. KINDER

BRANDON C. THOMPSON

Assistant United States Attorney

19 DONALDSON CHILLIEST & MCDANIEL LLP

20 BY: XAVIER R. DONALDSON

-and-

21 ANTHONY RICCO

STEVEN Z. LEGON

22 Attorneys for Defendant

23 Also Present:

Alexander Ross, Paralegal

24 Arjun Ahuja, Paralegal

Melissa Baccari, FBI Special Agent

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1 (Trial resumed; jury not present)

2 THE COURT: Okay. We received the email from
3 Mr. Ricco with regard to the instructions. The first ones
4 appeared just to be pointing out a typo, which was a reference
5 to Count One. The second one is it, Mr. Ricco, that the
6 request is we include the "mere association" language that
7 appears in the charge elsewhere in the --

8 MR. RICCO: Yes, Judge.

9 THE COURT: -- in the other section?

10 MR. RICCO: Yes. I didn't say that, but that's what I
11 was suggesting. I think the Court has a line on it, I think,
12 on page 28 or some other place. That's what we're requesting.
13 No more than that.

14 THE COURT: Okay. All right. Does the government
15 have any objection? You want to think about that or -- I think
16 it's just a copy and paste in the aiding and abetting section,
17 a sentence or two from the "mere association" that appears
18 somewhere else. I mean -- go ahead.

19 MR. MEAD: That sounds fine. If you don't mind, if we
20 take a look over lunch and we'll get back to the Court.

21 THE COURT: So with regard to this morning, my
22 understanding is it's going to be Mr. Slade and then -- no?
23 I'm sorry. Go ahead, Mr. Donaldson.

24 MR. DONALDSON: Mr. Sienko is going to go first and
25 probably only -- not probably, only.

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1 THE COURT: And how long do you think his direct will
2 be?

3 MR. DONALDSON: I don't imagine more than 15, 20
4 minutes. If it goes anything better than yesterday, should be
5 15 minutes.

6 THE COURT: Okay. All right. Okay. And is there
7 anyone -- I mean, those are the folks I was aware of. Is there
8 anything else? Yes, Mr. Ricco?

9 MR. RICCO: No, your Honor. There isn't anything
10 else, and the defendant is ready for your Honor's inquiry on
11 the issue that has been raised.

12 THE COURT: To close the loop. And that's exactly
13 where I was going. So why don't I just go through each of the
14 questions. Mr. Darden, you can remain seated. Just pull the
15 microphone closer to you to make sure everyone hears.

16 As I indicated previously, I want to make sure that
17 you are aware that you do not have to put on any evidence in
18 this trial -- however, there has been a defense case -- because
19 it's the government's burden to prove you guilty of the charges
20 contained in the indictment beyond a reasonable doubt.

21 Now, do you understand that?

22 THE DEFENDANT: I do, your Honor.

23 THE COURT: Now, however, you do have the right to
24 testify in your own defense, if you so choose.

25 Do you understand that?

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1 THE DEFENDANT: I do, your Honor.

2 THE COURT: Now, you also have the right not to
3 testify. Do you understand that?

4 THE DEFENDANT: I do. Thank you, your Honor.

5 THE COURT: Now, with regard to your right not to
6 testify, I will instruct the jury – in fact, I've already
7 instructed the jury, but I will do so again. I already
8 instructed in my preliminary remarks, and I will do so again in
9 the instructions that we went over yesterday that they may not
10 draw any inference of guilt against you based upon your
11 decision not to testify and the fact that you did not testify,
12 and that fact may not enter into their deliberations in any
13 way.

14 So I want to make sure that you know that the decision
15 whether or not to testify is yours. You're obviously entitled
16 to, and I assume that you've been speaking with your attorneys
17 to assist you in making that decision. In other words you're
18 entitled to their advice. But at the end of the day, the
19 decision is yours to make.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Now, counsel, so Mr. Donaldson, Mr. Ricco,
23 have you discussed this issue with Mr. Darden, his decision
24 whether or not to testify with him?

25 MR. RICCO: Yes, I have, your Honor.

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1 THE COURT: And have you had enough time to discuss
2 the issue with him?

3 MR. RICCO: Your Honor, I strongly believe that we've
4 had enough time to discuss the issue, particularly in light of
5 your Honor's instructions along the way. At every opportunity
6 in between, we've further discussed those issues with
7 Mr. Darden, and I feel that they've been sufficiently addressed
8 by Mr. Darden.

9 THE COURT: Okay.

10 MR. RICCO: And he's nodding in agreement.

11 THE DEFENDANT: I agree.

12 THE COURT: So the next question was, Mr. Darden, you
13 agree that you've had sufficient time to speak with your
14 attorneys about your decision whether or not to testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, do you understand that
17 that decision is entirely up to you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. As you sit here today, do you
20 intend to testify?

21 THE DEFENDANT: I do not, your Honor.

22 THE COURT: Okay. All right. Now, there's a small
23 window, one witness, where you can change your mind and decide
24 to. So when Mr. Sienko is done testifying, before the defense
25 rests, what I may do is excuse the jury, since we're going to

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1 break for the day -- well, let me ask, as things stand right
2 now, without Mr. Sienko's testimony, does the government have a
3 rebuttal case?

4 MR. MEAD: I would be extremely surprised, your Honor.

5 THE COURT: Okay. So it's likely no. Okay.

6 So what I will do is excuse the jury after Mr. Sienko.
7 We can take some time if there are any housekeeping matters,
8 other things that we need to discuss.

9 As I understand it, the government has indicated its
10 summation will be about an hour and a half. The defense has
11 indicated about the same amount of time. Or let me revisit the
12 government. It's just that --

13 MR. THOMPSON: 90 minutes, your Honor.

14 THE COURT: And Mr. Donaldson?

15 MR. DONALDSON: I'm still at at least 90 minutes,
16 judge?

17 THE COURT: It doesn't matter if it's more. The only
18 reason I was asking is should we start -- I will ask the jury
19 when they come back out if they can start earlier and whether
20 9:00 or 9:30 would be better.

21 MR. DONALDSON: I think 9:30 would be better. It's up
22 to the Court. If they can come here at 9:00, that's fine, but
23 9:30 is fine as well.

24 THE COURT: The only reason I want to ask the jury is
25 it's an issue if folks are taking mass transportation, if

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1 they're taking the train from one of the upper counties, the
2 schedule may not work out in a certain way. We can go off the
3 record for two seconds.

4 (Discussion off the record)

5 THE COURT: So I will speak with the jury about that.
6 And it's just a matter of timing, but if 9:30 works better for
7 counsel, we can sort of say that. My desire is that we get
8 through the summations in the morning. And so normally when
9 the jury is deliberating, we get them lunch. We'll get them
10 lunch tomorrow, but they can have lunch and then I'll do the
11 jury charge and then they'll get the case.

12 Hopefully we'll be able to get all of the jury
13 addresses done in that timeframe. If not, then the rebuttal
14 has to be in the afternoon. We can revisit that.

15 Anything we should deal with before we bring the jury
16 out from the government?

17 MR. MEAD: So last night, in anticipation of Mr. Slade
18 testifying, the government obtained a handful of documents,
19 which we had been considering introducing through Mr. Slade on
20 his cross-examination. We're not going to do that. We had not
21 turned those documents over to the defense. I'm going to turn
22 them over to the defense now in an abundance of caution, but
23 obviously we're turning them over with an understanding that
24 Mr. Slade is not testifying.

25 THE COURT: That's fine. By chance, do you have an

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1 extra copy of those?

2 MR. MEAD: I do, your Honor.

3 THE COURT: To satisfy my curiosity. Because I'm sure
4 you did more than I do, which is go to the Google machine to
5 see what I can recover.

6 MR. MEAD: There were some phone calls.

7 (Discussion off the record)

8 THE COURT: Thank you. The government has just handed
9 me a copy of it, but my understanding, just to confirm,
10 Mr. Mead, that the exhibits that you just provided to the
11 defense and provided to me, they were in anticipation of
12 Mr. Slade testifying. However, since he's not testifying, the
13 government does not intend to offer those?

14 MR. MEAD: That's correct. And since we're doing a
15 lot of this on the record, the documents are a couple buckets.
16 One bucket is Instagram photos from the defendant's wife
17 showing her at present in the house. Another bucket is
18 excerpts of a music video, still images from a music video.
19 Another bucket is a production agreement with some affiliate of
20 Sony Pictures.

21 THE COURT: All right. Thank you. So I take it
22 Mr. Sienko is here; is that correct?

23 MR. RICCO: Yes, Judge. He's right outside.

24 THE COURT: So any reason why we shouldn't get the
25 jury at this stage?

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1 MR. MEAD: No, your Honor.

2 MR. DONALDSON: No, your Honor. Thank you.

3 THE COURT: All right. We can get the jury. Thank

4 you.

5 (Continued on next page)

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Sienko - Direct

1 (In open court; jury present)

2 THE COURT: Okay. Ladies and gentlemen, just to give
3 you advance notice, today is also going to be a short day.
4 Tomorrow you will get the case. We'll have the summations
5 tomorrow and the jury instructions.

6 So remember, although we're very close, you still
7 don't have the case. So you're still not to discuss the case
8 or do any research with regard to the case. And we're going to
9 continue now with the defense case.

10 The defense's next witness?

11 MR. DONALDSON: The defense called Mr. Sienko.

12 THE COURT: Okay.

13 CHRISTOPHER SIENKO,

14 called as a witness by the Defense,

15 having been duly sworn, testified as follows:

16 THE COURT: Mr. Donaldson, you may inquire.

17 DIRECT EXAMINATION

18 BY MR. DONALDSON:

19 Q Mr. Sienko, good morning.

20 A Good morning.

21 Q How are you?

22 A I'm well, thank you. How are you?

23 Q I'm pretty good. Thank you for asking.

24 So I want to just get right to it. What's your -- if
25 you can tell the jury what your educational background is.

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Sienko - Direct

1 A I graduated from the University of Connecticut back in
2 1987, bachelor's in fine arts.

3 Q And if you can tell the jury a little bit about your
4 employment history.

5 A Certainly. I've owned several of my own small companies,
6 but as it relates to basketball I was at Mohegan Sun for about
7 14 years overseeing the Connecticut Sun, the New England Black
8 Wolves regional marketing and sponsorship for 14 years as a
9 vice president of the company. I was a general manager and
10 vice president of the Connecticut Sun. After that, I left in
11 2016. I started my small consulting firm. And then I became
12 employed by the Atlanta Dream in 2017 as their general manager
13 first as a consultant and then general manger and came onboard
14 as the president and GM in 2018. And I left there in 2021,
15 April of 2021.

16 Q So I want to get right to your employment with the Atlanta
17 Dream. What years were you there again?

18 A I was there from 2017 till 2021, April of 2021.

19 Q Were you a part of the process to sell the Atlanta Dream?

20 A Yes, sir.

21 Q And what was your role in that process?

22 A As a general manager I was a liaison between the ownership
23 group and potential purchasers of the team.

24 Q When you say liaison between the ownership and potential
25 purchasers, what do you mean by "liaison"?

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Sienko - Direct

1 A The ownership group, which my primary contact at the time
2 was John Brock, would ask me to talk and vet with different
3 ownership groups, supply them with information that they
4 required as it related to budgets, marketing -- oh, information
5 that they required so they could put together a -- excuse me --
6 a proposal for sale -- for purchase, rather.

7 Q Do you recall someone named Calvin Darden during that
8 process of selling the Atlanta Dream in 2020?

9 A I interacted with Calvin Darden, Jr., correct.

10 Q Do you recall Calvin Darden, Sr.?

11 A I met Calvin Darden, Sr. one time.

12 Q And when did you meet -- well, who did you meet Calvin
13 Darden, Sr. with?

14 A With Calvin Darden, Jr. and my coach at the time, Nicki
15 Collen.

16 Q Where did that meeting take place, if you recall?

17 A I don't remember the name of it. It was a restaurant
18 somewhere in Atlanta.

19 Q And what was the purpose of that meeting between you,
20 Calvin Darden, Jr., Calvin Darden, Sr., and the coach of the
21 Atlanta Dream?

22 A It was to meet them face to face. They wanted to meet
23 Coach Nicki and just kind of explain what they were thinking as
24 it related to the Atlanta Dream purchase.

25 Q When you say they wanted to explain, are you speaking about

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Sienko - Direct

1 Calvin Darden, Jr. and Calvin Darden, Sr?

2 A They were both in attendance, that's correct. So most of
3 the conversations was with Calvin Darden, Jr.

4 Q And did you as part of your responsibilities with the Dream
5 and the purchase sale of it -- I believe you said you
6 interacted with the potential purchasers related to, I guess,
7 giving them information related to the Dream?

8 A That's correct.

9 Q Do you recall someone named Dwight Howard?

10 A Yes.

11 Q Do you recall having any kind of communication with him
12 related to the sale or purchase of the Dream in 2020?

13 A Yes, I had a phone call with him in July of 2020.

14 Q And after July 2020, did you have any other communications
15 with Dwight Howard?

16 A Not that I recall.

17 MR. DONALDSON: Can I have one second, please, Judge?

18 THE COURT: Yes.

19 Q Did you have any communications with Mr. Darden, Jr.
20 related to a pitch deck or vision board?

21 A Yes, sir.

22 Q Do you recall whether or not you provided recommendations
23 to Mr. Darden related to that vision board?

24 A Yes, I did.

25 MR. DONALDSON: One second, please, your Honor.

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Sienko - Cross

1 THE COURT: Okay.

2 MR. DONALDSON: Can I have -- Mr. Ross, could you put
3 up 2165 for the witness and attorneys only, please, Government
4 Exhibit 2165.

5 Q Now, when you had these communications with Mr. Darden, Jr.
6 related to the vision board -- strike that.

7 You said you offered suggestions to Mr. Darden related
8 to that, correct?

9 A That's correct.

10 Q And did you speak to Mr. Darden, Jr. related to any
11 upcoming meetings he might be having related to his purchase or
12 their purchase of the Dream?

13 A Not unlike any other ownership group, they would all be
14 potentially vetting themselves or they would be vetting
15 themselves with the WNBA -- vetted by the WNBA, as well as the
16 ownership group prior to any purchase.

17 Q Say that again.

18 A So any suggestions I would make would go toward that deck
19 so they could better present themselves for ownership groups or
20 the league.

21 MR. DONALDSON: No further questions.

22 MR. MEAD: Pull up Grand Jury Exhibit 2119 in
23 evidence, please, Mr. Ross.

24 CROSS-EXAMINATION

25 BY MR. MEAD:

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Sienko - Cross

1 Q Good morning, Mr. Sienko.

2 A Good morning.

3 Q Do you remember being asked questions about a vision plan
4 on your direct?

5 A Yes, sir.

6 Q And that vision plan was provided to you and the Dream by
7 Calvin Darden, Jr., right?

8 A That's correct.

9 Q 2119.

10 Is this the email where Calvin Darden, Jr. sent John
11 Brock the original version of the vision plan?

12 A Yes, sir.

13 Q Okay. And do you remember being asked questions on direct
14 about whether you provided suggestions to the vision plan?

15 A Yes, sir.

16 Q Did you ever tell Calvin Darden, Jr. that he should lie in
17 the vision plan?

18 A No, sir.

19 MR. MEAD: Okay. Can we go, please, to page -- I
20 think it's seven of this document, Mr. Ross.

21 Q Do you see this advisory board slide?

22 A Yes, sir.

23 Q Have you seen this before?

24 A Yes, sir.

25 Q This was in the original version of the vision plan, right?

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Sienko - Cross

1 A As I recall, yes.

2 Q Before you provided any suggestions about edits to this
3 vision plan right?

4 A That's correct, sir.

5 Q You ever tell Calvin Darden, Jr. that Jennifer Baltimore
6 would join an advisory board for him?

7 A No, sir.

8 Q You ever tell him that Naomi Osaka would join a vision
9 board for them?

10 A No, sir.

11 Q Rosalind Brewer?

12 A No, sir.

13 Q Tyler Perry?

14 A No, sir.

15 Q Any of the other folks on this page?

16 A No, sir.

17 Q Okay. Page 17 of this document, please.

18 And again, this is the original version of the vision
19 plan, right?

20 A That I recall, yes.

21 Q Okay. You ever tell Calvin Darden, Jr. that he should lie
22 about his corporate sponsors?

23 A No, sir.

24 Q You ever tell him that Aflac was going to be a corporate
25 sponsor for him?

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Sienko - Cross

1 A No, sir.

2 Q What about Tyler Perry Studios?

3 A No, sir.

4 Q What about Starbucks?

5 A No, sir.

6 Q Okay. You understood that the purpose of this PowerPoint
7 was to help Calvin Darden, Jr. buy the team, right?

8 A That's correct.

9 MR. MEAD: You can take this down, Mr. Ross.

10 Q Do you remember being asked questions about your meetings
11 and communications with Calvin Darden, Jr. and Calvin Darden,
12 Sr. on direct?

13 A Yes, sir.

14 Q You talked to Calvin Darden, Jr. a good number of times,
15 right?

16 A Yes, sir.

17 Q By phone?

18 A Yes, sir.

19 Q By email?

20 A Yes, sir.

21 Q And once in person?

22 A That's correct.

23 Q Okay. Calvin Darden, Sr., you talked to him too, right?

24 A One time, that is correct.

25 Q And that was just the single in-person meeting, right?

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Sienko - Cross

1 A That's correct.

2 Q You ever talk to him on phone?

3 A No, sir.

4 Q You ever email with him that you know about?

5 A Not that I can recall.

6 Q And the one meeting, I think you said was in Atlanta?

7 A That's correct.

8 Q Was it in a coffee shop?

9 A Yes, sir.

10 Q And it was you and the coach?

11 A That's correct.

12 Q And Calvin Darden, Jr. and Calvin Darden, Sr., right?

13 A Correct.

14 Q And Calvin Darden, Jr. did almost all the talking, right?

15 A Most of the talking as I can recall, yes.

16 MR. DONALDSON: I'm sorry, Judge. I didn't hear the
17 last part of the answer.

18 THE COURT: So the question was, "And Calvin Darden,
19 Jr. did almost all of the talking, right?" "Most of the
20 talking that I can recall, yes."

21 Q And based on the fact that almost all of your
22 communications about this process were with Calvin Darden, Jr.,
23 be fair to say that Calvin Darden, Sr. seemed kind of more like
24 a figurehead in this deal, right?

25 MR. DONALDSON: Objection.

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Sienko - Cross

1 THE COURT: Well, if you could rephrase the question.
2 Objection sustained.

3 MR. MEAD: I can move on, your Honor.

4 Q There was a purchase group that had as kind of in the
5 moving parts Dwight Howard, Calvin Darden, Jr., and Calvin
6 Darden, Sr., right?

7 A My recollection was Dwight Howard at the very beginning,
8 and then he kind of faded out of the picture, that it was more
9 Calvin Darden, Jr.

10 Q That group never bought the Atlanta Dream, right?

11 A No, they did not.

12 Q And no part of the Atlanta Dream was ever bought by that
13 group, right?

14 A That's correct.

15 MR. MEAD: One second.

16 THE COURT: Yes.

17 MR. MEAD: Just a second, your Honor.

18 THE COURT: Sure.

19 Q Do you remember when we looked at the corporate sponsors
20 and the advisory board?

21 A Yes, sir.

22 Q Did you understand at the time that you saw that document
23 that those were real?

24 A Yes, sir.

25 Q And that those people really were going to be part of the

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Sienko - Redirect

1 advisory board?

2 A That's how I interpreted it, yes.

3 Q And that the corporate sponsors really were going to be
4 corporate sponsors for the Atlanta Dream if the deal went
5 through?

6 A Yes, sir.

7 Q Did you ask Calvin Darden whether those things were real?

8 A I did not, no.

9 Q Okay. And you never told him to put any of those names or
10 companies in, right?

11 A That's correct.

12 MR. MEAD: No further questions. Thank you.

13 THE COURT: Okay. Any redirect?

14 MR. DONALDSON: Just briefly, Judge. Well, one
15 second.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MR. DONALDSON:

19 Q Could you put up 2142, please government Exhibit 2142.

20 Now, related to the cross, you mentioned that you did
21 review this vision board and you did give suggestions, right?

22 A Correct.

23 Q Now, one of those suggestions, you actually said -- you
24 suggested that as it related to sponsors, if there's any way of
25 using the word commitment to the team upon ownership

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Sienko - Recross

1 transaction being made. Do you recall asking Mr. Darden to add
2 the word "commitment" to the sponsorship part, correct?

3 A That's what's written here, yes.

4 Q And so you also asked Mr. Darden to -- you suggested an
5 over-the-top presentation that would seem "pie in the sky,"
6 correct?

7 MR. MEAD: Objection.

8 THE COURT: Sustained. I mean, is there --

9 MR. DONALDSON: As to form?

10 THE COURT: You can rephrase the question.

11 Q Did you suggest to Mr. Darden that they do some type of
12 over-the-top, pie-in-the-sky type presentation for the WNBA?

13 A No, I was -- I believe how I'm interpreting it is it should
14 not be pie in the sky.

15 THE COURT: I'm sorry. Should?

16 THE WITNESS: Not be pie in the sky.

17 MR. DONALDSON: No further questions.

18 THE COURT: Okay.

19 MR. MEAD: Just a second, your Honor.

20 Leave up 2142, please. And you can zoom in on the
21 line that says "the last thing," please, Mr. Ross.

22 RECCROSS EXAMINATION

23 BY MR. MEAD:

24 Q Mr. Sienko, you told Calvin Darden, Jr. the last thing that
25 should be suggested is an over-the-top presentation that seems

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Sienko - Recross

1 pie in the sky to the W, right?

2 A That's correct.

3 Q And the "W" is the WNBA, right?

4 A That is correct.

5 Q And you were telling Calvin Darden, Jr. that you shouldn't
6 exaggerate what he could do with this deal, right?

7 A Exactly.

8 MR. MEAD: Can you zoom out of this, Mr. Ross.

9 Q Then you see the line as it relates to sponsors? And you
10 told Calvin Darden, Jr. as it relates to sponsors, if there is
11 any way of using the word commitment to the team upon ownership
12 transaction being made, that's what you told him, right?

13 A That's correct.

14 Q And you weren't telling him to lie that there were
15 commitments, right?

16 A That's correct.

17 Q You were asking him whether there were actually commitments
18 from these companies, right?

19 A That's correct. It would help them in the sales or the
20 purchase process if he had committed sponsors. That's correct.

21 Q And Calvin Darden, Jr., in fact, added that language in the
22 vision plan, didn't he?

23 A In the second iteration, yes, sir.

24 Q And you understood he added it because it was true, right?

25 A Yes, sir.

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Sienko - Recross

1 MR. MEAD: No further questions.

2 THE COURT: Okay. All right. So ladies and
3 gentlemen, we're going to take a brief break. I need to speak
4 to the attorneys, and then we'll come and get you. So go back,
5 relax. Do not discuss the case, and we'll come and get you in
6 a moment. Mr. Sienko, you may step down. Thank you.

7 (Witness excused)

8 (Continued on next page)

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(In open court; jury not present)

THE COURT: Okay. You may be seated.

So first, Mr. Darden, when the jury comes back -- well, let me ask, Mr. Donaldson, when the jury comes back and I ask for the defense's next witness, is the defense going to rest?

MR. DONALDSON: Yes.

THE COURT: Okay. So Mr. Darden, in light of the fact that when the jury comes back in, the defense is going to rest, I'm going to ask you again as you stand here right now, are you going to testify?

THE DEFENDANT: No, your Honor.

THE COURT: Okay. All right. Thank you. You may be seated. Okay.

So the defense case will be concluded. And so when the jury comes out, there are several things I'm going to mention, to reiterate they're going to get the case tomorrow. We're going to do summations tomorrow. I'm going to ask them whether they can come in at 9:00 or 9:30.

Well, let me ask counsel. So why don't we say 9:30 and then we'll see how it plays out and then indicate to them that after the summations there will be the jury instructions. And after that, they will get the case.

The parties should be prepared to send back the exhibits. I don't believe there are any exhibits -- well, are

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1 there any exhibits that for whatever reason we're not going to
2 send back? I don't know whether the underlying phone records
3 and other things came in or not. But in any event, I'm going
4 to -- you guys should be prepared to have those go back as soon
5 as the jury gets the case. We'll send them back.

6 First thing they'll do is vote on a foreperson, and
7 then we'll send the exhibits back with them after the jury
8 charge. And if possible, my recollection is that there are no
9 standalone defense exhibits that, in other words --

10 MR. DONALDSON: No.

11 THE COURT: And no DXs. So the parties should review
12 the laptop, if that's what it's going to be on. Or it could be
13 a laptop and a hard copy, however the parties choose to do it,
14 to make sure that everybody's in agreement that everything that
15 is in evidence is part of that.

16 Let me ask is there anything else that I should
17 mention to the jury before excusing them for the day from the
18 government's perspective?

19 MR. MEAD: No, your Honor. Thank you.

20 THE COURT: From the defense perspective?

21 MR. DONALDSON: No, your Honor.

22 THE COURT: Okay. Is there anything else -- well, we
23 can talk about is there any housekeeping matters. We will turn
24 the jury instruction and verdict sheet and provide it to the
25 parties later on today. I'd ask that by close of business

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1 today -- well, obviously you can interject objections, but
2 we're going to need to print the request to charge. So I just
3 ask if things do come to you as you review the instructions
4 that we send, if you could provide us with whatever comments
5 you have by the close of business today, that would be helpful
6 because we will be printing those out for the jury.

7 Okay. Ms. Disla, if we could get the jury. And I'm
8 going to apologize to them. I'll say it's my fault that we
9 have such a short day, but that we have things to do, I have
10 things to do with you for the balance of the day. And so we'll
11 see them tomorrow morning for the summations. Okay? All
12 right.

13 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: The defense's next witness?

3 MR. DONALDSON: Your Honor, the defense rests.

4 THE COURT: Okay. All right. So ladies and
5 gentlemen, so that concludes the presentation of evidence. And
6 I apologize for having you come in. I know it was a short day.
7 But we're done with the evidence, so tomorrow, we're going to
8 have summations in the beginning of the day. It will be the
9 government's summation and the defense, if they choose to make
10 a summation, but I believe they're going to, and then a
11 rebuttal by the government. So that will take up probably the
12 morning.

13 So I'm going to make a request of you, if it's
14 possible, which is would we be able to start at about 9:30?
15 Now, I know that some of you are traveling and you may be using
16 mass transportation, so the schedule may not work out. Just if
17 you're able to make it at 9:30, we'd like to start at 9:30 so
18 that we can try and get all of the summations in before lunch.

19 We'll take a break for lunch, if we're able to do
20 that, and then I'll give you the instructions because it's
21 always better to have the instructions after eating. I'm just
22 kidding. The instructions you'll see, and each of you will get
23 a copy. You'll be able to follow along. But they're
24 50-something pages, and I read them. So we want all of your
25 focus. And so breaking it up I think makes sense. And you're

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1 going to be able to take the instructions back with you to the
2 jury room.

3 So before you depart for the day, we're going to
4 provide you with lunch tomorrow. And so Ms. Disla will --
5 there are order sheets that she needs your assistance to fill
6 out for lunch tomorrow.

7 Now, is there any member -- all you have to do is raise
8 your hand -- who would not be able to make it at 9:30 tomorrow?
9 So we'll see everybody tomorrow at 9:30. And you're inching
10 closer and closer to getting the case. But remember you don't
11 have it yet. You haven't heard the arguments of the parties.
12 You haven't heard also my instructions on the law, which are
13 going to be a guide to you as you consider the facts and apply
14 them to the law.

15 So do not discuss the case with anyone else. Do not
16 do any research. Go home or spend the day relaxing. If you
17 have to go to work, go to work. And we'll see you tomorrow
18 morning at 9:30 okay? Thank you very much.

19 (Continued on next page)
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(In open court; jury not present)

THE COURT: Okay. So 9:30. Let me ask in terms of -- I know that both sides indicated there may be demonstratives used during summations. I think the rebuttal there sounds like there may be something used. In the main summation is there going to be?

MR. THOMPSON: Just a PowerPoint, but nothing beyond that.

THE COURT: I think you still -- in terms of -- if you could show it to the defense.

MR. THOMPSON: Certainly.

THE COURT: Just to make sure if there are any objections. And it's a PowerPoint, am I correct, just to be utilized to assist the jury and aid as you're presenting your summations?

MR. THOMPSON: That's right, Judge, and we will provide it.

MR. DONALDSON: Judge, I'm sorry. I have a PowerPoint, as well, and I'll just say for the record I don't normally provide that to the prosecution prior to my summation. If I had some -- I don't know, some actual demonstratives stuff, then yes. But as far as my PowerPoint is concerned, I don't generally --

THE COURT: I mean, look, it's up to --

MR. DONALDSON: -- provide that to the government

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1 before I do my summation.

2 THE COURT: I typically, you know, ask the parties
3 that they do so. The argument is not evidence, I do understand
4 that, but it's a goose/gander thing. If you're not going to
5 provide it, they're not going to provide it. If there's an
6 objection, there will be an objection, and I'll work that out
7 as you go along.

8 MR. DONALDSON: I think that's, from my perspective,
9 more welcome to do it that way.

10 THE COURT: But I would like to see them in advance.
11 So even if you don't provide them to one another, please
12 provide them to me just in case as I -- I mean, I'm highly
13 unlikely to interject, absent something that -- either
14 questions that I have or something that I think is just not
15 something that should be before the jury, which I highly doubt
16 that will be the case. But if you could provide it to me,
17 that's fine. And if there are objections as you go through,
18 I'll deal with those as we -- as the jury addresses are going
19 on.

20 MR. DONALDSON: Very good.

21 MR. MEAD: The opening/closing PowerPoint and the
22 defense PowerPoint we'll get to the judge ex parte. I am
23 unlikely to have slides. If I have slides, I will certainly
24 share them with the Court for my rebuttal. I will have a
25 demonstrative chart that is created for the purpose of this. I

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1 do intend to show that to the defense. If the defense is
2 creating anything, I would say that is new, that is not just
3 "here's a picture of an exhibit, here's bullet points," I guess
4 that makes sense to exchange. But I'm assuming the defense is
5 not going to do anything like that anyway.

6 THE COURT: In other words, it's a demonstrative chart
7 that is further summarization of the evidence?

8 MR. MEAD: Additional financial information summary.

9 MR. RICCO: So your Honor, I understand Mr. Mead's
10 point. We have no such chart.

11 THE COURT: Okay.

12 MR. RICCO: Should that change, we will, of course,
13 give that to the government. As we're here now, we don't have
14 one and we don't anticipate using such a chart.

15 THE COURT: That's fine. Let me ask, so I think we've
16 covered all of the logistics matters, but is there anything
17 else we should take up at this juncture?

18 You know, my hope is that we're able to get -- with a
19 break probably after -- I'll see how it goes, but an hour and a
20 half, if we're able to take a break in between the addresses, I
21 think that makes -- if they're an hour and a half, right?
22 Aren't there studies that show after about two hours, folks'
23 attention span starts to drop?

24 But I'll see how it goes. It may be I'll try and get
25 the -- three hours is a long time, so I may take a break. But

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1 I do want to try and get them done before lunch. If not, the
2 jury is going to be here, so we could have a lunch, that's --
3 it may just be an hour. And I will obviously advise the jury
4 that even though they've heard argument, they still don't have
5 the case, they haven't heard the instructions, and so they're
6 to relax, have lunch, that way they're able to -- the
7 alternates will also have lunch.

8 But once I do the jury charge, I'll excuse the
9 alternates, and they'll be -- let me just confirm, is there any
10 objection so what I propose, which is -- and I just want to
11 confirm again to letting the alternates go, but advising them
12 they may be called back so they shouldn't discuss the case with
13 anyone, rather than keeping them in the courthouse?

14 MR. MEAD: No objection.

15 THE COURT: Okay. Defense?

16 MR. DONALDSON: No objection to that.

17 THE COURT: Okay. So we'll follow that.

18 So let me ask are there any other things that we
19 should take up?

20 MR. MEAD: I think I speak for all the lawyers when I
21 say even if a very short bathroom break in between all the
22 summations, I think would be great.

23 And then I think we owe the Court an answer on one
24 jury instruction issue. We can send the court a one-sentence
25 letter or maybe an email something on that. I think we'll

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1 consent, but we'll get back to the Court.

2 THE COURT: That's the copy and pasting a sentence or
3 two from one part of the instructions to the aiding and
4 abetting portion. I think it's the association language that's
5 in another section.

6 MR. RICCO: Yes, Judge. That's what we're requesting.
7 No more.

8 THE COURT: And just to be clear, I haven't actually
9 looked at it in place. But I will say that from my
10 perspective, I don't have an objection if there's no legal
11 problem with it, but that the instructions are to be taken as a
12 whole, and that instruction is part of it, and "that
13 instruction," meaning the association. And so the jury should
14 take that.

15 Having said that, if it's appropriate to remind the
16 jury in the aiding and abetting section of that, I don't have a
17 problem with necessarily repetition. But if there is an issue,
18 in other words, we need to discuss it, just let me know and
19 we'll come in tomorrow, we still will have time to print out
20 the copies.

21 All right. Anything else? Anything from the defense?

22 MR. RICCO: Yes, Judge.

23 THE COURT: Yes?

24 MR. RICCO: At the close of all evidence, the defense
25 moves, pursuant to Rule 29, for a judgment of acquittal with

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1 respect to each of the five counts, specifically that the
2 government has presented insufficient evidence on the elements
3 of knowledge and intent as it relates to each count to sustain
4 a conviction under those individual counts.

5 THE COURT: Okay.

6 MR. RICCO: Thank you. And I rest, your Honor, on the
7 evidence that has been presented. I have no additional
8 arguments or evidence to point to.

9 THE COURT: Anything from the government?

10 MR. THOMPSON: Your Honor, nothing has changed with
11 the defense's case. And for the reasons the government
12 explained in its first response to defense's motion, the
13 government's position is that there's an abundance of evidence
14 demonstrating that the jury could find the defendant guilty.

15 THE COURT: Okay. So what I would say is I previously
16 considered the defense's Rule 29 motion after the close of the
17 government's case. My comments at that time are equally
18 applicable here, so they should be considered as reiterated in
19 connection with my denial at that time.

20 Since that time, my views have not changed concerning
21 the evidence, and I do believe there's more than sufficient
22 evidence to present the case to the jury with regard to each of
23 the counts and the elements of those counts, and that nothing
24 that has been presented in the defense case would cause me to
25 change that view concerning the Rule 29 application. In other

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1 words, it still should go to the jury, and then we'll see what
2 the jury does. Okay? All right.

3 Thank you very much. I'll see everybody tomorrow at
4 9:30 unless we have to take up -- yes, Mr. Ritchin?

5 MR. RITCHIN: Judge, I wanted to apologize. I won't
6 be able to be here tomorrow or Friday.

7 THE COURT: All right. You know what I neglected to
8 do? I would have assumed that the jurors would have mentioned,
9 and I think we -- I think if there was an issue with regard to
10 the holiday, and I think the jurors that had issues I think had
11 been excused. Okay, Mr. Ritchin. All right. Well --

12 MR. RICCO: Judge, also Mr. Legon will be also absent
13 during the same time period. He's also observing.

14 THE COURT: All right. Well, both of you should have
15 a good holiday, hopefully spending it with family. And
16 Mr. Ritchin, hopefully the wheels don't come off the bus in
17 your absence. We'll see. But --

18 MR. RITCHIN: I have great confidence in the team,
19 your Honor.

20 THE COURT: At least someone does. And obviously that
21 was just tongue-in-cheek.

22 All right. Thank you, everyone. I'll see everybody
23 at 9:30. Thank you very much. We'll stand adjourned.

24 (Adjourned to October 3, 2024, at 9:30 a.m.)
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